

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

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ARKANSAS SECURITIES DEPT.

IN THE MATTER OF
CAPITAL MARKETS ADVISORY, LLC, f/k/a
CARR MILLER CAPITAL INVESTMENTS, LLC,
and BRIAN PATRICK CARR

Case No. S-09-059

COMPLAINT

The staff of the Arkansas Securities Department (Staff) hereby institutes formal administrative proceedings against Capital Markets Advisory, LLC, and Brian Patrick Carr, and in pursuance of that complaint states the following:

AUTHORITY

1. This complaint is filed and this proceeding instituted pursuant to the Arkansas Securities Act, Ark. Code Ann. §§ 23-42-101 through 509, (Act), the Rules of the Arkansas Securities Commissioner promulgated thereunder (Rules), and the Arkansas Administrative Procedures Act, Ark. Code Ann. §§ 25-15-201 through 219.

RESPONDENTS

2. Capital Markets Advisory, LLC, was formerly known as Carr Miller Capital Investments, LLC (CMI). It is a state-regulated investment adviser firm based in New Jersey. On December 21, 2009, CMI changed its name to Capital Markets Advisory, LLC. Because it was not known by the new name at any time discussed herein, it will be referred to as Carr Miller Capital Investments, LLC, and the acronym, CMI. According to the Central

Registration Depository (CRD)¹, CMI's main office is located at 51 JFK Parkway, First Floor West, Short Hills, New Jersey 07078. According to the CRD, CMI had another office in Little Rock located at 650 Shackleford Road, Suite 325. It was registered with the Arkansas Securities Department (Department) as an investment adviser from December 17, 2008, until it withdrew its registration, effective on October 29, 2009. Its CRD number is 141999.

3. Brian Patrick Carr, a New Jersey resident, is listed with the New Jersey Department of the Treasury (NJ Treasury)² as a 95% owner of CMI and its managing member. According to the CRD, he is CMI's managing member and its chief compliance officer. His CRD number is 2577346.

FACTUAL ALLEGATIONS

4. Carr Miller Capital, LLC (CMC), is not a party respondent, but is inextricably entwined in the facts of this matter. CMC is a New Jersey limited liability company. The certificate of formation for CMC was filed on June 26, 2006, with the NJ Treasury. The main business address for CMC is listed as 7 Norrskan Drive, Marlton, New Jersey 08053. CMC is not registered in accordance with the Act in any way.
5. Everett Charles Ford Miller is also not a party respondent, but is inextricably entwined in the facts of this matter. Miller, a New Jersey resident, is listed with the NJ Treasury as a 5% owner of CMI and CMC's sole owner, authorized representative and chief executive officer.

¹The electronic registration system set up and run by the Financial Industry Regulatory Agency (FINRA) for the securities industry in North America.

²New Jersey business formation records are kept in the NJ Treasury.

Although Miller was registered as a representative of CMI in New Jersey during the time period discussed herein, he has never been registered in any capacity with the Department. His CRD number is 4166092.

6. In August 2009, the Staff opened an investigation into the CMI Little Rock office. Records recovered in an on-site examination of CMI's Little Rock office reveal that through the agency of CMI and its agents, CMC offered or sold 12 promissory notes entitled Commercial Notes (Notes) to nine Arkansas investors for a total of \$1,398,866.70. They were all written for a term of nine months. Both CMI and its agents received commissions for all but one of these offers or sales.³ The details of each offer or sale can be summarized as follows:

INVESTOR	DATE	AMOUNT	TERM	RATE	SALES AGENT(S)
AR1	12/1/08	25000.00	9 Months	8%	Talbert
AR2	2/1/09	189720.00	9 Months	7%	Talbert
	2/11/09	309000.00	9 Months	4%	Talbert
AR3	4/20/09	200000.00	9 Months	8%	Talbert
AR4	12/20/08	100000.00	9 Months	8%	Talbert
	5/29/09	100000.00	9 Months	8%	Talbert
AR5	6/5/09	30271.70	9 Months	8%	Bragg & Talbert
	7/15/09	25000.00	9 Months	8%	Talbert
AR6	7/15/09	12041.00	9 Months	8%	Bragg
AR7	7/15/09	293122.00	9 Months	8%	Bragg
AR8	9/1/09	50000.00	9 Months	8%	Garrett
AR9	7/24/09	64712.00	9 Months	8%	Talbert

7. The on-site examination revealed that Samuel C. Talbert, Robert E. Bragg and Richard A. Garrett were referred to as managing directors of the Little Rock office of CMI, but only

³The offer had been accepted by AR8 and the sale was being attempted at the time of the Staff's on-site examination. AR8's check was delivered to the Little Rock CMI office, and the paperwork was completed. However, the check and paperwork were not forwarded on to CMC's New Jersey office. AR8's funds were returned to him. Although no commissions were paid, an offer to sell was made.

Bragg was registered as a representative of CMI.⁴ Talbert is an Arkansas resident registered with the Arkansas Insurance Department (AID) as a resident producer insurance agent. He is the owner, president, controller and tax preparer of an insurance agency, Allied Financial Services, Inc., d/b/a Allied Insurance and Financial Services, Inc. (Allied), whose address was at all times discussed herein the same as CMI's Little Rock office. Garrett is also an Arkansas resident registered with the AID and was at the times discussed herein associated with Allied. Neither Talbert, nor Garrett has never been registered with the Department in any capacity. Either Talbert, or Bragg was involved in the sale of all but one of the Notes, the one offered to AR8, which was cancelled.

8. On April 1, 2008, CMC and CMI entered into an agreement entitled

“ADVISORY/CONSULTANT AGREEMENT/Related to CarrMiller Capital Notes.”

According to this agreement, CMC engaged CMI as “independent contractor/consultant” to “solicit and refer clients to [CMC]” who CMI believed were “suitable to [CMC] to ‘lend’ proceeds for the purpose of beneficially participating in the [CMC] portfolio.” CMC agreed to pay CMI a \$50,000 yearly retainer and 5% per annum of principal amount of the notes sold, payable monthly over a 12 month period, reducing to 2% after January 2010. The retainer would be credited against the 5% fee. Thus, by the time CMI opened its Little Rock office, CMC had authorized the offer and sale of the Notes.

⁴Neither Talbert, nor Bragg are respondents in this order, and both have entered into consent orders that can be found on the Arkansas Securities Department website under administrative orders issued in 2010, bearing the numbers S-09-059-10-OR02 and S-09-059-10-OR03, respectively.

9. Miller, Carr and staff members of CMC told the staff of the CMI Little Rock office in meetings and in telephone and email communications at various times during the period CMI's Little Rock office was open that the Notes were not securities, were covered by Regulation D⁵ and could be sold without a license or registration. Nevertheless, the agents were informed, there were advantages to being registered as an investment adviser representative (IA representative) of CMI: if an agent had passed the Series 65 test and was registered as an IA representative of CMI, the commission would be paid to the agent every year as an investment advisory fee, but if he had not passed the test and was not registered as an IA representative, the commission would only be paid during the first year.
10. There were no offering materials for the Notes. Sometime in late 2008 or early 2009, Talbert told a CMC staff member that he was having trouble selling the Notes because people were more wary in the wake of the Madoff scandal⁶ and asked CMC for more information to give prospective purchasers of the Notes. In response, CMC supplied CMI with a document entitled Carr Miller Capital Executive Summary (Executive Summary), which was produced for the use of agents selling the Notes. Although they were not permitted to give copies of the Executive Summary to prospective purchasers, this was the only information CMI agents could convey to prospective purchasers about the Notes. Talbert, Bragg and other agents

⁵This is a federal regulation promulgated pursuant to the Securities Act of 1933 and codified at 17 C.F.R. §§ 230.501 through 230.508.

⁶Madoff scandal refers to the case of Bernard Madoff who pleaded guilty in March 2009 to having run a massive Ponzi scheme losing investors some \$18 billion. He was sentenced to 150 years imprisonment on June 29, 2009. See <http://www.justice.gov/usao/nys/madoff.html>.

conveyed the information in the Executive Summary to prospective purchasers of the Notes in offering and selling the Notes.

11. The Staff found several copies of the Executive Summary during its examination. In the Executive Summary the broad purpose of the Notes was disclosed as follows:

Carr Miller Capital invests directly into a vast number of companies and unique opportunities Opportunities are available in any market; however, the current economy creates even more opportunities than usual. Carr Miller is positioned to take advantage of these opportunities by creating an ‘Opportunity Pool’. Carr Miller builds this fund by borrowing money from private individuals and companies and then take advantage of these investment opportunities. Carr Miller maintains diversity by investing in unrelated types of industries. Our firm has created proprietary internal Funds to accomplish these goals.

In the remainder of the Executive Summary, four CMC “proprietary internal” investment funds are described as typical or representative of funds into which the proceeds of the sales of the Notes are invested to produce a return.

12. In regard to the Notes, a search of the records of the Department reflects no registration, no proof of exemption from the registration provisions of the Act and no notice filing filed in the case of a covered security under federal law in accordance with Ark. Code Ann. § 23-42-509. Further, a search of the records of the United States Securities and Exchange Commission (SEC) reveals no filing regarding the Notes pursuant to Regulation D.
13. Carr, as the 95% owner, managing member and chief compliance officer of CMI, held a position at CMI with responsibility and authority for authorizing the business activities engaged in by CMI. Carr could have prevented CMI from offering and selling the Notes, which were unregistered securities, through its agents for a commission. Instead, Carr caused CMI to offer and sell the Notes through its agents for a commission and facilitated the same.

WILLFUL VIOLATIONS OF THE ACT

14. CMI, in the offer and sale of the Notes, offered and sold unregistered securities through its agents in violation of Ark. Code Ann. § 23-42-501.

15. Carr occupied a position of responsibility and authority with CMI such that he could have prevented the offer and sale of unregistered securities, the Notes, through CMI's agents, a violation of Ark. Code Ann. § 23-42-501, but instead caused and facilitated the violation. Carr is therefore personally responsible for CMI's violation of Ark. Code Ann. § 23-42-501.

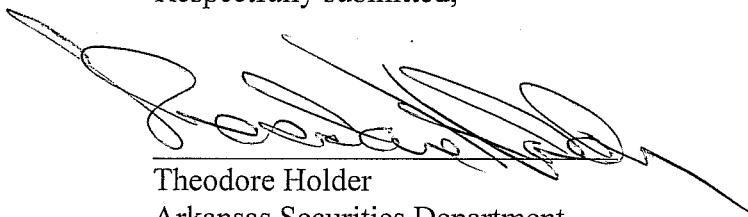
WHEREFORE, the Staff respectfully prays that the Commissioner to:

- 1) revoke CMI's registration as of the last date on which its registration in Arkansas was effective in accordance with Ark. Code Ann. § 23-42-308(a)(2)(B) for the willful violation of the Act set forth above, namely the offer or sale of unregistered securities, a violation of Ark. Code Ann. § 23-42-501;
- 2) revoke Carr's registration as of the last date on which its registration in Arkansas was effective in accordance with Ark. Code Ann. § 23-42-308(a)(2)(B) for the willful violation of the Act set forth above, namely the offer or sale of unregistered securities, a violation of Ark. Code Ann. § 23-42-501; and
- 3) fine CMI in accordance with Ark. Code Ann. § 23-42-308(g) \$5,000 for each offer or sale of the twelve Notes set out above for a total of \$60,000, each offer or sale of unregistered securities being a violation of Ark. Code Ann. § 23-42-501; and
- 4) fine Carr in accordance with Ark. Code Ann. § 23-42-308(g) \$5,000 for each offer or sale of the twelve Notes set out above for a total of \$60,000, each offer or sale of unregistered

securities being a violation of Ark. Code Ann. § 23-42-501.

The Staff further requests the Commissioner to set a date for a hearing and for all other just and proper relief as the Commissioner deems just and proper.

Respectfully submitted,



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